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31 JAN 2008

Legal Staff  
International Division

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600 Travis Street      713.650.2400 FAX  
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From the desk of: Cherita  
Grimstead

Date: January 31, 2008  
Time: 4:30PM  
Total pages (+ cover): 13

Emp #: 1692	Billing #: 11321- P077WOUS
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Recipient	Company	Phone #	Fax #
1. Examiner A. Smith	USPTO	571/272-3298	571/273-0459
2.			
3.			
4.			
5.			

**Message**

Supplemental Declaration filing per our conversation on January 30, 2008 for Application No. 10/575,352.

If any transmission problems, please call: 713.650.2402

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ATTORNEY DOCKET NO.  
11321-P077WOUS

PATENT  
Serial No. 10/575,352

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Richard E. Smalley, Deceased, et al.  
Serial No: 10/575,352  
International App'l No: PCT/US2004/34002  
Int'l Filing Date: October 14, 2005  
Group Art Unit: Unknown  
Confirmation No: 9430  
Title: Amplification of Carbon Nanotubes Via Seeded-Growth Methods

Mail Stop PCT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**RENEWED SUBMISSION UNDER 37 CFR 1.42**

In response to the Decision on Papers Under 37 CFR 1.42 with the mail date of June 11, 2007, with two-months to provide a response ending on August 11, 2007, Applicant encloses the following documents:

1. Declaration in compliance under 37 CFR 1.497(a)-(b) executed by Irene M. Marek, legal representative of deceased inventor Richard B. Smalley;
2. Supplemental Declaration Under 37 CFR 1.42 executed by Irene M. Marek; and
3. A copy of the Decision on Papers Under 37 CFR 1.42;

ATTORNEY DOCKET NO.  
11321-P077WOUS

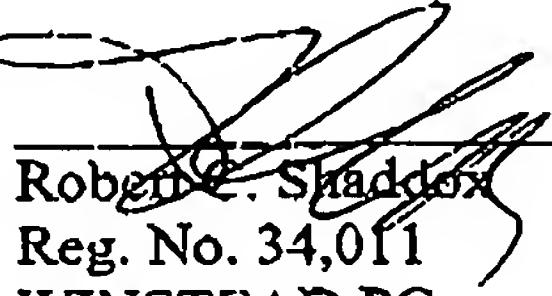
PATENT  
Serial No. 10/575,352

Applicant does not believe there are any fees due at this time; however, if there any fees required, Commissioner is hereby authorized to charge any fees relating to this filing to the Winstead Sechrest & Minick P.C. Deposit Account No. 23-2426. Any questions regarding this filing should be directed to the attorney below.

Dated:

8/13/07

Respectfully submitted,

  
Robert E. Shaddox  
Reg. No. 34,011  
WINSTEAD PC  
P.O. Box 50784  
Dallas, TX 75201  
Tel (713) 650-2764  
Fax (214) 745-5390

ATTORNEY FOR APPLICANTS

**CERTIFICATE OF TRANSMISSION OR MAILING UNDER 37 C.F.R. § 1.10**

I hereby certify that the attached *Response to Notice Notification of Missing Requirements* is being filed electronically with the United States Patent and Trademark Office via EFS-Web on the date below:

August 13, 2007  
Date

Cleita Winstead  
Signature

928121v.1 11321/P077WOUS



## UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

11 JUN 2007

RECEIVED BY

JUN 15 2007

BY WINSTEAD

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JUN 18 2007

By MJT

Ross Spencer Garsson  
Winstead Sechrest & Minick P.C.  
P.O. Box 50784  
Dallas, Texas 75201

In re Application of :  
SMALLEY et al. :  
Application No.: 10/575,352 :  
PCT No.: PCT/US04/34002 :  
Int. Filing Date: 14 October 2004 :  
Priority Date: 14 October 2003 :  
Attorney Docket No.: 11321P077WOUS :  
For: AMPLIFICATION OF CARBON  
NANOTUBES VIA SEEDED-GROWTH  
METHODS

DECISION ON  
PAPERS UNDER 37 CFR 1.42

This decision is issued in response to the declaration filed 19 April 2007 which is being treated as a request under 37 CFR 1.42. No petition fee is required.

### BACKGROUND

On 14 October 2004, applicants filed the above-identified international application which claimed a priority date of 14 October 2003. Pursuant to 37 CFR 1.495 the deadline for payment of the basic national fee was to expire 30 months from the priority date, 14 April 2006.

On 11 April 2006, applicants filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee; a copy of the international application; and a preliminary amendment.

On 19 April 2007, applicants filed a declaration executed by twelve of the thirteen inventors and Irene M. Marek, on behalf of deceased inventor, Richard E. Smalley.

### DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Application No.: 10/575,352

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The declaration filed on 19 April 2007 is executed by twelve of the thirteen inventors and Irene M. Marek as the "legal representative" of the deceased inventor, Richard E. Smalley. The declaration submitted appears to have been executed by the proper party under 37 CFR 1.42, however, the declaration does not satisfy the requirements under 37 CFR 1.497(b)(2).

37 CFR 1.497(b)(2) states the following:

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) to whom the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to 37 CFR 1.497(b)(2), in addition to the citizenship and former residence and post office address of the deceased inventor referenced under 37 CFR 1.497(a)(3) and 37 CFR 1.63, the declaration must also provide name, residence, citizenship, and post office address for the legal representative. In this case, the declaration filed on 19 April 2007 provides the residence, citizenship, and post office address for only one individual and it is unclear whether this information is for the legal representative or the deceased inventor. Accordingly, the declaration is not in compliance with 37 CFR 1.497(b)(2).

Additionally, the declaration is not in compliance with 37 CFR 1.497(a)-(b) in that it gives the impression that Irene M. Marek is the first or sole inventor for the present application. A compliant declaration under 37 CFR 1.497(a)-(b) would identify the inventors as they appear in the published International Application. In order to proceed under 37 CFR 1.42, applicant must provide a declaration that: (1) properly identifies the inventors; (2) sets forth the residence, post office address and country of citizenship for both the deceased co-inventor, Richard E. Smalley and the legal representative, Irene M. Marek; and (3) states the relationship (i.e. legal representative or sole heirs) of Irene M. Marek to the deceased inventor.

### CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is REFUSED.

Applicants are required to provide an oath/declaration in compliance with 37 CFR 1.497(a)-(b) within **TWO (2) MONTHS** from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42" and must include an acceptable declaration under 37 CFR 1.497 which has been executed by the

Application No.: 10/575,352

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either the legal representative of the deceased inventor or, if no legal representative has been appointed, all of the heirs of the deceased inventor.

Any further correspondence with respect to this matter should be addressed to:  
Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box  
1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the  
attention of the Office of PCT Legal Administration.

Anthony Smith

Anthony Smith  
Attorney-Advisor  
Office of PCT Legal Administration  
Tel: (571) 272-3298  
Fax: (571) 273-0459

**SUPPLEMENTAL DECLARATION UNDER 37 C.F.R. § 1.42  
FOR SIGNING BY LEGAL REPRESENTATIVE ON  
BEHALF OF DECEASED INVENTOR**

I, Irene M. Marek, hereby declare that I am a citizen of the United States, residing at 3 Stagestop Circle, Houston, Texas 77024. I further declare that I have been appointed as a legal representative of Richard E. Smalley, who passed away on October 28, 2005, as I am named as executrix in his will. Upon information and belief, I aver those facts that he is required to state in order to apply for a patent or allowance of my patent application in which he is listed as an inventor. Further, it is my understanding that this patent application in which Richard E. Smalley is listed as an inventor is to be assigned to Rice University, his employer since 1976, pursuant to the Rice University Policy.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 8/10/07

Irene M. Marek

Irene M. Marek  
Legal Representative of Richard E. Smalley

Houston\_19241961  
11321-P077WOUS 7/24/2007

PTO/SB/01 (07-06)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**DECLARATION FOR UTILITY OR  
DESIGN  
PATENT APPLICATION  
(37 CFR 1.63)**

Declaration Submitted With Initial Filing

OR

Declaration Submitted after Initial Filing (surcharge (37 CFR 1.16 (e)) required)

Attorney Docket Number	11321-P077WOUS
First Named Inventor	RICHARD E. SMALLEY ET AL.
COMPLETE IF KNOWN	
Application Number	10/575,352
Filing Date	OCTOBER 14, 2004
Art Unit	UNKNOWN
Examiner Name	UNKNOWN

I hereby declare that:

Each inventor's residence, mailing address, and citizenship are as stated below next to their name.

I believe the inventor(s) named below to be the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**AMPLIFICATION OF CARBON NANOTUBES VIA SEEDED-GROWTH METHODS**

(Title of the Invention)

the specification of which

is attached hereto

OR

was filed on (MM/DD/YYYY) October 14, 2004 as United States Application Number or PCT International

Application Number PCT/US2004/34002 and was amended on (MM/DD/YYYY)   (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached? YES	Certified Copy Attached? NO
N/A			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/013 attached hereto.

[Page 1 of 2]

This collection of information is required by 35 U.S.C. 111, and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/01 (07-06)

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**DECLARATION — Utility or Design Patent Application**

Direct all correspondence to:

The address associated with Customer Number:

61060

OR

Correspondence address below

Name

Address

City

State

ZIP

Country

Telephone

Email

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

NAME OF SOLE OR FIRST INVENTOR:

 A petition has been filed for this unsigned inventor

Given Name (first and middle [if any])

Richard E.

Family Name or Surname

Smalley, Deceased

Inventor's Signature

*Richard E. Smalley, Executor of the Estate of Smalley*

Date

*8/10/07*

Residence: City

Houston

State

TX

Country

US

Citizenship

US

Mailing Address  
1816 Bolsover Street

City

Houston

State

TX

Zip

77005

Country

US

Additional inventors or a legal representative are being named on the

4 supplemental sheet(s) PTO/SB/02A or 02LR attached hereto.

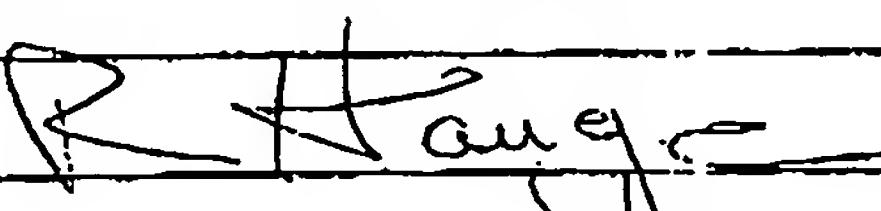
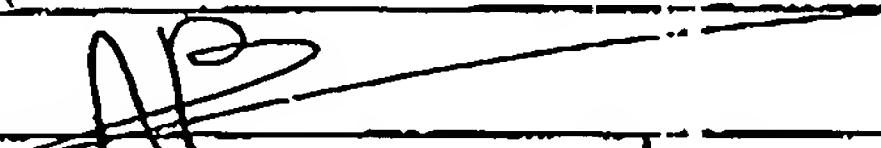
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<b>DECLARATION</b>	<b>ADDITIONAL INVENTOR(S)</b>
Supplemental Sheet	
Page 3 of 6	

<b>Name of Additional Joint Inventor, if any:</b>		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Robert H. 		Hauge	
Inventor's Signature		Date 3/12/2007	
Houston Residence: City		TX State	US Country
4031 Tumbleberry Circle		US Citizenship	
<b>Mailing Address</b>			
Houston City		TX State	77025 Zip
US Country		US Country	
<b>Name of Additional Joint Inventor, if any:</b>		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Andrew M. R. 		Barron	
Inventor's Signature		Date 2/15/07	
Houston Residence: City		TX State	US Country
241 Acbury		GB Citizenship	
<b>Mailing Address</b>			
Houston City		TX State	77007 Zip
US Country		US Country	
<b>Name of Additional Joint Inventor, if any:</b>		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
James M. 		Tour	
Inventor's Signature		Date 2/15/07	
Bellair Residence: City		TX State	US Country
4625 Spruce Street		US Citizenship	
<b>Mailing Address</b>			
Bellair City		TX State	77401 Zip
US Country		US Country	

This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.53. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and transmitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**DECLARATION****ADDITIONAL INVENTOR(S)  
Supplemental Sheet**

Page 4 of 6

<b>Name of Additional Joint Inventor, If any:</b>		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))  Howard K.		Family Name or Surname  Schmitz	
Inventor's Signature  <i>Howard K. Schmitz</i>			Date 2/17/07
Cypress Residence: City 20702 Bradford Creek Court	TX State	US Country	US Citizenship
<b>Mailing Address</b>			
Cypress City	TX State	77433 Zip	US Country
<b>Name of Additional Joint Inventor, If any:</b>		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))  W. Edward		Family Name or Surname  Billups	
Inventor's Signature  <i>W. Edward Billups</i>			Date 12/20/06
Houston Residence: City 6416 Rutgers	TX State	US Country	US Citizenship
<b>Mailing Address</b>			
Houston City	TX State	77005 Zip	US Country
<b>Name of Additional Joint Inventor, If any:</b>		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))  Christopher A.		Family Name or Surname  Dyko	
Inventor's Signature  <i>Christopher A. Dyko</i>			Date 2/15/2007
Humble Residence: City 19811 Spoonwood Drive	TX State	US Country	US Citizenship
<b>Mailing Address</b>			
Humble City	TX State	77346 Zip	US Country

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**DECLARATION****ADDITIONAL INVENTOR(S)**

## Supplemental Sheet

Page 5 of 6

Name of Additional Joint Inventor, if any:	<input type="checkbox"/> A petition has been filed for this unsigned inventor
--	---

Given Name (first and middle (if any))	Family Name or Surname
--	------------------------

Valerie C.	Moore
------------	-------

Inventor's Signature	Date
----------------------	------

03-19-2007
------------

Houston Residence: City	TX State	US Country	US Citizenship
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2255 Braeswood Park Dr., No. 139

## Mailing Address

Houston City	TX State	77030 Zip	US Country
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Name of Additional Joint Inventor, if any:	<input type="checkbox"/> A petition has been filed for this unsigned inventor
--	---

Given Name (first and middle (if any))	Family Name or Surname
--	------------------------

Elizabeth	Whitford
-----------	----------

Inventor's Signature	Date
----------------------	------

04/07
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Houston Residence: City	TX State	US Country	US Citizenship
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806 LaMonte Lane

## Mailing Address

Houston City	TX State	77018 Zip	US Country
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Name of Additional Joint Inventor, if any:	<input type="checkbox"/> A petition has been filed for this unsigned inventor
--	---

Given Name (first and middle (if any))	Family Name or Surname
--	------------------------

Robin E.	Anderson
----------	----------

Inventor's Signature	Date
----------------------	------

13 Apr 07
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Toronto Residence: City	Ontario State	CA Country	US Citizenship
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100 Gloucester St., Apt. 803

## Mailing Address

Toronto City	ON State	M4Y 1M1 Zip	CA Country
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This collection of information is required by 35 U.S.C. 111, and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**DECLARATION****ADDITIONAL INVENTOR(S)  
Supplemental Sheet**Page 6 of 6

<b>Name of Additional Joint Inventor, if any:</b>		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Ramon		Colorado, Jr.	
Inventor's Signature	<i>Ramon L. Colorado, Jr.</i>		
Houston Residence: City	TX State	US Country	US Citizenship
5104 Irving Way			
<b>Mailing Address</b>			
Houston City	TX State	77087-3629 Zip	US Country
<b>Name of Additional Joint Inventor, if any:</b>		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Michael P.		Stewart	
Inventor's Signature	<i>Michael P. Stewart</i>		
Mountain View Residence: City	CA State	US Country	US Citizenship
1392 N. Rengstorff Ave., Apt. 2			
<b>Mailing Address</b>			
Mountain View City	CA State	94043 Zip	US Country
<b>Name of Additional Joint Inventor, if any:</b>		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Douglas C.		Ognin	
Inventor's Signature	<i>Douglas C.</i>		
Houston Residence: City	TX State	US Country	US Citizenship
2825 Bellefontaine, No. 240A			
<b>Mailing Address</b>			
Houston City	TX State	77025 Zip	US Country

This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and transmitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND COMMENTS OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.